

THIS PROPOSED RULE IS SUBMITTED FOR PUBLIC COMMENTS AFTER INPUT FROM INTERESTED PARTIES AND IS TO BE USED SOLELY FOR DISCUSSION PURPOSES AT THE PUBLIC HEARING ON THE PROPOSED RULE. UNDER NO CIRCUMSTANCES IS THIS PROPOSED RULE TO BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS.

AMENDATORY SECTION (Amending WSR 96-16-086, filed 8/7/96, effective 9/7/96)

WAC 458-20-12401 Special stadium sales and use tax. (1) **Introduction.** RCW 82.14.360 (~~(was amended in the third special session in 1995. (See chapter 1, 1995 3rd sp.s.)~~ Effective January 1, 1996,) provides for a special stadium sales and use tax that applies to sales of food and beverages by restaurants, taverns, and bars in counties with a population of one million or more. Currently, the special stadium tax applies only in King County. The tax applies only to those food and beverage sales that are already subject to the retail sales tax. Grocery stores, mini-markets, and convenience stores were specifically excluded from the definition of a restaurant and are not required to collect the tax. However, a restaurant located within a grocery store, mini-market, or convenience store is subject to this tax if the restaurant is owned or operated by a different legal entity from the store or market. This section explains when the tax will apply.

(2) **Definitions.** The following definitions apply to this section.

(a) "Restaurant" means any establishment having special space and accommodation where food and beverages are regularly sold to the public for immediate, but not necessarily on-site, consumption, but excluding grocery stores, mini-markets, and convenience stores. Restaurant includes, but is not limited to, lunch counters, diners, coffee shops, espresso shops or bars, concession stands or counters, delicatessens, and cafeterias. It also includes space and accommodations where food and beverages are sold to the public for immediate consumption that are located within hotels, motels, lodges, boarding houses, bed-and-breakfast facilities, hospitals, office buildings, movie theaters, and schools, colleges, or universities, if a separate charge is made for such food or beverages. Mobile sales units that sell food or beverages for immediate consumption within a place, the entrance to which is subject to an admission charge, are "restaurants" for purposes of this tax. So too are public and private carriers, such as trains and vessels, that sell food or beverages for immediate consumption on trips that both

originate and terminate within the county imposing the special stadium tax if a separate charge for the food and/or beverages is made. A restaurant is open to the public for purposes of this section if members of the public can be served as guests. "Restaurant" does not include businesses making sales through vending machines or through mobile sales units such as catering trucks or sidewalk vendors of food or beverage items.

(b) "Tavern" has the same meaning here as in RCW 66.04.010 and means any establishment with special space and accommodation for the sale of beer by the glass and for consumption on the premises.

(c) "Bar" means any establishment selling liquor by the glass or other open container and includes, but is not limited to, establishments that have been issued a class H license by the liquor control board.

(d) "Grocery stores, mini-markets, and convenience stores," have their ordinary and common meaning.

(3) **Tax application.** This special stadium sales and use tax currently applies only to food and beverages sold by restaurants, bars, and taverns in King County. The tax is in addition to any other sales or use tax that applies to these sales. This special tax only applies if the regular sales or use tax imposed by chapters 82.08 or 82.12 RCW applies.

(a) The tax applies to the total charge made by the restaurant, tavern, or bar, for food and beverages. If a mandatory gratuity is included in the charge that, too, is subject to the tax.

(b) Catering provided by a restaurant, tavern, or bar is also subject to the tax. However, when catering is done by a business that does not meet the definition of restaurant in subsection (2) of this section, has no facilities for preparing food, and all food is prepared at the customer's location, the charge is not subject to the tax.

(c) In the case of catering subject to the tax, if a separate charge is made for linens, glassware, tables, tents, or other items of tangible personal property that are not required for the catering, those separate charges are not subject to the tax. However, separately stated charges for items that are required as a part of the catering service, such as waitpersons or mandatory gratuities, are subject to the tax.

(4) **Examples.** The following examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances. For these examples, assume the transactions occur in King County.

(a) ((XYZ)) The Hot Bakery operates a coffee shop where customers may purchase baked goods and coffee for consumption on the premises ((or may purchase bakery products for consumption elsewhere)). ((The sales of)) When utensils are provided with

the bakery goods ((and beverages for consumption on the premises are)), the sale of bakery goods, along with the coffee is considered prepared food. The sale of prepared food is subject to the retail sales tax and special stadium tax. ((The)) If the bakery products are bagged or boxed without utensils, the retail sales and special stadium ((tax does)) taxes do not apply ((to the bakery goods sold "to go" because)) under the provisions of RCW 82.08.0293 ((and)). See WAC 458-20-244((6) these bakery goods are not subject to the state retail sales tax. Since the state retail sales tax does not apply to these sales, neither does the special stadium sales tax)) Food and food ingredients, for information about the sales of prepared foods.

(b) ((XYZ)) Charlie operates a "fast food" business. Customers may consume the food and beverages on the premises or may take the food "to go" for consumption elsewhere. All sales of food and beverages by this business are subject to the special stadium tax, including the food and beverages sold "to go."

(c) ((XYZ)) Jane operates carts that may be set up on a sidewalk or within parks from which customers may purchase hot dogs and beverages. The cart includes heating facilities for preparation of hot dogs at the cart site. No seating is provided by the business. The site location is not owned or leased by ((the business)) Jane. These sales are not subject to the special stadium sales tax because the business does not have a designated space for the preparation of the food it sells. This business does not fit the definition of "restaurant." However, if ((XYZ)) Jane operates a mobile food service unit selling food or beverages for immediate consumption at fixed locations within the grounds of a stadium, arena, fairgrounds, or other place, admission to which is subject to an admission charge, then the special stadium tax applies.

(d) ((XYZ)) Bill operates a combination gas station and convenience store. The convenience store sells some groceries and also some prepared foods such as hot dogs and hamburgers. Customers may also purchase soft drinks or coffee by the cup. None of these sales are subject to the special stadium sales tax because of the specific language in the statute exempting convenience stores from the tax.

(e) ((XYZ)) Peter operates a business that sells prepared pizza. The business prepares and bakes the pizza at its premises. The business has no seating. Customers may order the pizzas by either entering ((the seller's)) Peter's place of business or by telephone. Customers may either take delivery at the seller's site or the business will deliver the pizza to the customer's residence or other site. These sales are subject to the special stadium sales tax because the business does have a designated site and facilities for the preparation of food for sale for immediate consumption, even though no seating is

available. The regular retail sales tax applies to these sales since these sales are not exempt food products under RCW 82.08.0293 (2)((+e)).

(f) ((XYZ)) Jack has the exclusive concession rights to prepare and sell hot dogs within a sports facility. Customers place their orders and take delivery of the prepared food and beverages at ((the—seller's)) Jack's site in the sports facility. ((XYZ)) Jack provides no seating that ((it)) he controls. Customers generally take the food and beverage to their seats and consume the items while watching the sports event. ((XYZ)) Jack will also prepare hot dogs and soft drinks at ((its)) his food bar and use ((its)) his employees or agents to sell these products to customers in the stands while the sports event is in progress. All of the sales of food and beverages by ((XYZ)) Jack are subject to the special stadium sales tax. ((XYZ's)) Jack's business operation meets the definition of "restaurant." ((XYZ)) Jack has set aside space that ((it)) he controls for the purpose of preparing food and beverages for immediate consumption for sale to the public.

(g) ((DEF)) Jinny operates a cafe within ((ABC's)) Abe's grocery store, for the sale of food or beverages for immediate consumption on the premises. ((ABC)) Abe's grocery store is a separate entity from ((DEF)) Jinny's cafe, and it leases the space for the cafe to ((DEF)) Jinny. Sales of food and beverages by ((ABC)) Abe's grocery store are exempt from the special stadium tax, but sales ((from)) at the cafe by ((DEF)) Jinny are subject to ((that)) retail sales tax and the special stadium sales tax.